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FISCAL IMPACT STATEMENT

LS 6375

BILL NUMBER: SB 145

NOTE PREPARED: Nov 27, 2002

BILL AMENDED:

SUBJECT: Death Penalty.

FIRST AUTHOR: Sen. Bowser

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) It provides that any lingering doubt concerning a defendant's guilt constitutes a mitigating circumstance in a death penalty case or a life without parole case.
- (B) It requires the judge in a death penalty case to instruct the jury as follows: "If a juror has any lingering doubt about the defendant's guilt, that doubt may be considered a mitigating circumstance that weighs against the imposition of the death penalty."
- (C) It prohibits imposition of the death penalty or life imprisonment without parole if the jury deadlocks.
- (D) It makes a technical correction.

Effective Date: July 1, 2003.

Explanation of State Expenditures: The costs of executing an offender are generally more expensive than sentencing an offender to either a term of years or life without parole. If a jury deadlocks, then the court would be limited to sentencing an offender to a term of years.

In the table below, LSA staff compared the costs to the state of each sentencing option for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) Staff assumed an offender would spend an average period of 11 years on death row before being executed if the death penalty was imposed and 32.5 years if an offender is sentenced to 65 years in prison. (Most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior.) Offenders sentenced to life without parole were assumed to remain in Department of Correction (DOC) facilities until the age of 77. Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual

inflation rate of 5.2%. The following table presents these costs.

| Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder | |
|--|--------------------------|
| <u>Sentence</u> | <u>Net Present Value</u> |
| Death Penalty | \$510,158 |
| Life Without Parole | \$489,012 |
| 65 Years with 50% Credit Time | \$430,367 |

See also *Explanation of Local Expenditures*.

Background Information: There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$3,724. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$12,004 for a case involving life without parole. Besides the staff costs for legal representation, both the DOC and the Indiana State Police generally incur added overtime costs for providing security in death penalty cases around the time of the execution.

The costs to the Department of Correction would be greater if an offender is housed in DOC facilities for a determinate sentence of between 45 and 65 years than if an offender is executed.

Explanation of Local Expenditures: *Provisions A and B:* Under current law at a trial where the death penalty has been requested, either the judge or the jury can consider one of eight mitigating circumstances when deciding whether the defendant should receive either death or life without parole. This provision would allow the judge or jury to cite a “lingering doubt” as a reason to not impose the death penalty.

Provision C: Under current law, if a jury is deadlocked about a decision, the court would discharge the jury and conduct a bench trial to determine an appropriate sentence. The court may choose between death, life without parole, or a term of years. As proposed, if a jury is deadlocked, a court would dismiss the jury and would conduct a bench trial. The court’s option would be a term of years. The term of years for a murder can range from 45 to 65 years, depending on mitigating and aggravating circumstances

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission*, January 2002; Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>

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